DOCUMENT RESUME

ED 071 421 EM 010 663

AUTHOR	Whitehead, Clay T.
TITLE	Remarks Before the California Community Television Association. Cable Television; The Problems and the Policies.
INSTITUTION	Office of Telecommunications Policy, Washington, D.C.
PUB DATE	16 Nov 72
NOTE	11p.; Speech presented to the California Community Television Association (Anaheim, California, November 16, 1972)
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	Administrative Agencies; *Administrative Policy; Agency Role; *Broadcast Industry; *Cable Television; *Federal Legislation; *Policy Formation; Speeches

ABSTRACT

In the eyes of government, private industry, and investors, cable television has a mixed identity, being part public utility, part broadcaster, and part pay television. On top of that, cable systems can present themselves as either a single business or an interlocking group of highly specialized related businesses. Mr. Whitehead, representing the Nixon Administration, views it as a potentially viable public medium and wants long-term resolution of cable policies. In order to make the correct decisions regarding this fledgling industry, complicated issues must be legally resolved, particularly copyright and access issues. The fear of monopolistic initiative controlling the industry can only be met by effective structuring of regulations that recognize the variety and diversity of the enterprises involved in cable television. (MC)

REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

before the

California Community
Television Association

Anaheim, California

November 16, 1972

I am always glad to have the opportunity to return to California. It may be true what they say about Maine in regard to our national elections. But in many phases of our national life, we have to look to California to see the future trends.

I have read of the accomplishments of the cable industry here in California and have also kept in touch with some of your future plans. The development of the potential of cable communications is a challenging task, and I commend your efforts at meeting this challenge.

However, the development of the cable television industry cannot proceed much further until it is put on a solid structural foundation. Right now cable television is suffering from an identity problem. What type of business are you? Are you a public utility? Are you an adjunct to the broadcasting business? Are you merely in the business of laying copper and stringing wires? Are you in the pay television business? Are you multi-channel broadcasters? Is this one business or many separate businesses?

It is important that the cable industry's identity crisis be cured. The public wants to know what services the cable industry will provide; the Government needs to know what kind of industry it is going to regulate; and the financial community wants to know in what kind of business it is going to invest.

In order to answer these questions, a number of thorny policy issues must be resolved. Both the Office of Telecommunications Policy (OTP) and the Cabinet committee on cable television have exhaustively studied these issues and have sought solutions which will result in a more up-to-date regulatory framework for both cable and over-the-air broadcasting.

These policy issues cannot be postponed. And it is important that resolution come in the form of legislation from Congress. If there was ever any doubt as to the necessity for Congressional legislation in this area, it was dispelled by Supreme Court Chief Justice Burger. The Chief Justice recognized the immediacy of the problem and the need for Congressional resolution when he stated in the Midwest Video case: "The almost explosive development of CATV suggests the need of a comprehensive reexamination of the statutory scheme as it relates to this new development, so that the basic policies are considered by Congress and not left entirely to the Commission and the courts."

In enacting this legislation, Congress should bear in mind two important principles that have been distilled from past experience with legislation in the regulatory areas.

First, it is dangerous enough to give vague mandates to the regulatory agencies when drafting legislation dealing with fixed technologies. And when you have to deal with a rapidly expanding technology like cable, the problem becomes even more complicated.

The legislation, therefore, should not be cast in any permanent mold but rather should allow for the evolving status of cable. This could best be done by Congress defining specifically what the public interest is in this area and also the scope and limits of the FCC's jurisdiction. Thus the FCC would have clearly defined regulatory standards to follow. Moreover, the statute would be flexible enough to accomodate itself to the changing face of broadband communications technologies.

Second, the legislation should come in one comprehensive legislative package and not be done on a detail-by-detail, "as need arises" basis. If Congress were to adopt this piecemeal approach, the cable field would be replete with a number of very specific bills dealing with particular problems at particular points of time. The result would be a complicated set of rules and regulations and the total absence of any comprehensive policy standards and goals to guide the FCC.

Along with the development of a legislative framework for cable itself, the copyright issue is of immediate importance. This problem stands squarely in the way of any long-range development of the cable industry and must be resolved in the near future. The Administration is firmly committed to a regulatory structure for cable and over-the-air broadcasting that is posited on free and open competition. But this competition must be fair; and until this copyright issue is resolved, the possibility--and the appearance--of unfair competition by cable operators remains. An equitable solution to this copyright problem must be found.

In legislation dealing with the cable medium in its own right, two of the most important issues are access, and the division of regulatory responsibilities.

The access issue must be resolved. Everyone agrees that no private entity should be allowed to control all the cable channels in a given community. The problem is in developing a flexible means for preventing such potential concentrations of power.

There are three major policy options available to the Cabinet committee and OTP for dealing with cable monopoly problems. One option would be for cable companies to be regulated from the beginning as public utilities; the problems of monopoly abuse, thus need never arise. However, cable television is a dynamic, evolving business and to subject it at the outset to the whole panoply of public utility rules and regulations would very likely have the effect of inhibiting its growth and viability to the point of denying its usefulness.

A second option would be simply to leave the industry as it presently exists under FCC regulation. But this approach also raises problems. It may only postpone the inevitable transition to public utility regulation. Cable television systems are natural monopolies in specific geographic areas and as their penetrations into the markets increased under this policy so would their monopoly power. The Government would have to gradually tighten its regulatory control. And to protect the public from the monopoly power it sanctioned, the Government would have to bind the cable system owner so tightly in Government red tape that he would be unable to use his monopoly power. The end result--public utility regulation--would be the same as the first policy option.

A third option would be for the Government to recognize the several different businesses involved in cable communications--program creation, origination, supply, and program transmission--and to separate those aspects that are tied to the technical or transmission monopoly from those, such as program supply, that are characterized by free and open competition. Only the former would be subject to the strict type of regulation in order to avoid monopoly power.

This last option places primary reliance on an effective structuring of the cable television industry and on our free market incentives. It is also more consistent with the private enterprise system and our traditional Government-business relationships.

The second issue is the division of regulatory responsibility between Federal, State, and local authorities over cable television. As you well know, the cable television industry inevitably will be subject to Federal and local, and probably State, regulation. The potential of cable television is so great that effective regulations may be needed at all levels; but these regulations need not be overlapping and duplicative. The goal should be a balance among Federal, State, and local regulation--not a confusing balance of power but sensible, clearly delineated responsibilities and functions. And to avoid any possible conflicts, the functions granted at one level should be denied at the other levels.

The cable policy will also have to determine under what conditions the public will be allowed to buy and the industry to sell programming. This is not the old pay television siphoning problem.

It is clear that advertisers are not likely to be allocating much more than present amounts for television coverage. The search for new revenues, therefore, must go elsewhere and what could be a better source than the television viewer?

Why not allow a mixed system of funding program costs? Such a system--tapping advertisers and subscribers--

would provide the sort of incentive needed for expansion of consumer program choice. Since mass appeal program revenues are limited, television would have to turn to the more specialized viewing audience. And these specialized audiences would be willing to pay only if the programming presented something above and beyond the current mass appeal offerings. This type of programming--dependent as it would be on its attractiveness to a specialized audience--would thus represent a net addition to, rather than a replacement of, our mass appeal programming. Moreover, advertising revenues would still continue for these mass appeal programs. The mixed system would simply provide a whole new source of funding. And the benefits from this funding would be evident in an increased diversity in programming.

The important thing is for the public's interest to prevail in the area of pay cable television. The viewing public should have the opportunity to decide whether it wants to pay for the kind of specialized programming above and beyond current offerings that pay cable television can provide. The television consumer should be able to vote with his dollars on the issue of pay cable television.

The Administration's interest in cable television is the public's interest. And we believe that the public's interest can be best served by properly structuring the cable industry in the free enterprise mold. Cable television ought to be allowed to grow as a business proposition. With the proper checks and balances, the public is best served by businesses growing and developing as businesses.

I should stress, however, that cable television's impact stretches beyond its everyday business operations. Cable television is becoming an important new public medium as well as a big business. Thus although we support cable television, we cannot simply support everything that is good for the cable business in the short-run. We also have to focus necessarily on the long-run and on the checks and balances that should be established for you.

Cable television is on the verge of becoming a very important industry. It is no longer the "poor relation" in the family of communications industries. Rather it has the potential to become a full-fledged member of the family and even give birth to some new offspring of its own. If it wishes to become such an adult, it must accept the long-term public interest responsibilities that come with such status.

The Administration wants the long-term resolution of these cable policies to result in a regulatory framework that is favorable to the growth and development of the cable industry. We hope you recognize this fact and work with us in developing these policies for the cable industry.